

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201603361	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/07/2016 9:50 AM	Location of Incident: Inside § 87(2)(b)	Precinct: 44	18 Mo. SOL 10/7/2017	EO SOL 10/7/2017	
Date/Time CV Reported Tue, 04/12/2016 6:00 AM	CV Reported At: Other City agency	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 04/19/2016 11:09 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Bryan Carney	26009	945555	WARRSEC
2. DT3 Matthew Murphy	3752	930804	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT2 Robert Graves	04588	945352	WARRSEC
2. SGT John Albertelli	03235	910972	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.POM Bryan Carney	Abuse: Police Officer Bryan Carney entered § 87(2)(b), in the Bronx.	§ 87(2)(b)
B.POM Bryan Carney	Abuse: Police Officer Bryan Carney searched § 87(2)(b) in the Bronx.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On April 12, 2016, the Internal Affairs Bureau (IAB) received the following complaint from 311 under SR #§ 87(2)(b), which was filed by § 87(2)(b). On April 19, 2016, this complaint was received by the Civilian Complaint Review Board (CCRB) under IAB log #16-12930.

On April 7, 2016, at approximately 9:50 a.m., Police Officer Bryan Carney, Sergeant John Albertelli, and Detective Matthew Murphy of the Warrant Section entered and searched § 87(2)(b)'s apartment located at § 87(2)(b), in the Bronx (**allegations A and B**). No arrests or summonses resulted from this incident. § 87(2)(g), § 87(4-b)

There is no video footage that captures this incident. This case is being closed more than 90 days after it was received by the CCRB due to Police Officer Carney rejecting mediation and the case being sent back from the Mediation Unit for investigation.

Mediation, Civil and Criminal Histories

- On May 26, 2016, this case was sent to the Mediation Unit. On August 1, 2016, this case was returned for an investigation after Police Officer Carney rejected mediation.
- On August 5, 2016, a Notice of Claim search was requested from the Comptroller's Office and will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one prior CCRB complaint. § 87(2)(b)
- Police Officer Bryan Carney has been a member of the NYPD for eight years and has had seven prior CCRB allegations against him involving four cases with no substantiated allegations § 87(2)(g), § 87(4-b)
- Detective Matthew Murphy has been a member of the NYPD for 14 years and has had six prior CCRB allegations against him involving three cases with no substantiated allegations § 87(2)(g), § 87(4-b)

Findings and Recommendations

Explanation of Subject Officer Identification

- It is undisputed that Police Officer Carney was the investigating officer assigned to the bench warrant executed in this incident and made the decisions regarding the

investigation including the entry into and search of § 87(2)(b)'s apartment. § 87(2)(g)

Allegations not pleaded

- **Abuse of Authority:** § 87(2)(b) alleged that the officers damaged her paintings as they searched her house though she did not observe the damage occur. She also alleged that Police Officer Carney took pictures of her property. § 87(2)(g)

Allegation A- Abuse of Authority: Police Officer Bryan Carney entered § 87(2)(b) in the Bronx.

Allegation B- Abuse of Authority: Police Officer Bryan Carney searched § 87(2)(b) in the Bronx.

On April 19, 2016, § 87(2)(b) provided a phone statement to the CCRB (Board Review 02). On May 10, 2016, § 87(2)(b) was interviewed at the CCRB (Board Review 03). On May 17, 2016, § 87(2)(b) the superintendent of § 87(2)(b) in the Bronx, provided a phone statement to the CCRB (Board Review 04). On May 24, 2016, Police Officer Bryan Carney, Detective Robert Graves and Detective Matthew Murphy were interviewed at the CCRB (Board Review 05, 06, and 07). On August 5, 2016, Sergeant John Albertelli was interviewed at the CCRB (Board Review 08).

It is undisputed that Police Officer Carney, along with Sergeant Albertelli and Detective Murphy, entered and searched § 87(2)(b) for § 87(2)(b)'s son, § 87(2)(b) under an active bench warrant (Board Review 09). It is also undisputed that prior to entering and searching the apartment, § 87(2)(b) told Police Officer Carney that § 87(2)(b) did not live there and was not there at that time.

§ 87(2)(b) alleged that the officers knocked on her door and asked for her son. She explained to them that he did not live there and that she has not seen him since August of 2015. After answering their questions, § 87(2)(b) attempted to close the door. Police Officer Carney allegedly pushed open the door and forced his way inside. The officers searched her apartment for her son. She never gave the officers permission to search her apartment but she never asked them to leave. § 87(2)(b) repeatedly stated to the officers, while they were in her apartment, that her son was not there and even informed the officers that they did not have a warrant to search her apartment.

Police Officer Carney stated that he had a bench warrant for § 87(2)(b) and his investigation led him to believe that § 87(2)(b) resided at § 87(2)(b)'s apartment on the bases of previous arrest records, previous domestic violence records, and benefit records, which all listed his address as § 87(2)(b). After he knocked on the door, it took a while for someone to answer the door and he heard footsteps inside the apartment which was the only thing that led him to believe that § 87(2)(b) was there at the time. He acknowledged that the footsteps he heard ended up being from § 87(2)(b) who soon answered the door.

As per Police Officer Carney, when § 87(2)(b) answered the door, he asked if they could come inside to speak to her in regards to his investigation into her son so that he would not have to "air her dirty laundry in the hallway." § 87(2)(b) did not attempt to close the door. She stepped back from the door and said, "Come in. I don't want people to hear what's going on in the hallway." Police Officer Carney asked § 87(2)(b) if § 87(2)(b) was in the apartment and

she stated that he was not. Police Officer Carney told her that he had a warrant and asked her if he could check the apartment. She was hesitant at first but after he explained that he had an arrest warrant and had the right to check the apartment to look for her son, she allowed them to search.

Detective Murphy only recalled that § 87(2)(b) opened the door for them and that they entered after Police Officer Carney told them that § 87(2)(b) stated that they could go into the apartment. Detective Murphy did not recall § 87(2)(b)'s exact words and did not see her attempt to close the apartment door. They searched the apartment and then left after approximately three minutes, when they did not find § 87(2)(b).

Sgt. Albertelli did not recall what was said outside of the apartment with § 87(2)(b) but recalled that there was no incident, leading him to believe that she allowed them into the apartment. He only recalled that they entered, searched the apartment and then left without incident, when they did not find § 87(2)(b).

A bench warrant permits entry into what the police reasonably believe to be the suspect's residence; provided that, at the time of the entry, the police reasonably believe that the suspect is present. People v. Smith, 806 N.Y.S. 2d 447 (2005). Consent given in response to a claim of legal authority is not voluntary and therefore not valid. Bumper v. North Carolina, 391 U.S. 543. Submission to authority does not constitute consent (Board Review 11). People v. Farquharson, 901 N.Y.S.2d 901 (2009 — Sup. Ct. Bronx County) (Board Review 10).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Squad: 2

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date